

**STATE OF NORTH DAKOTA**  
**BOARD OF ANIMAL HEALTH**

|  |   |                            |
|--|---|----------------------------|
| IN THE MATTER OF:                            | ) | <b>RECOMMENDED</b>         |
|  | ) | <b>FINDINGS OF FACT,</b>   |
| Tim Snyder                                   | ) | <b>CONCLUSIONS OF LAW,</b> |
|  | ) | <b>AND ORDER</b>           |
| Complaint against the Nontraditional         | ) |                            |
| Livestock License of Tim Snyder, Respondent. | ) |                            |
| .....  |   |                            |

On October 15, 2002, a Complaint was filed with the Board of Animal Health ("Board") by Kevin McCabe, assistant attorney general, Office of Attorney General, Attorneys for the Board, requesting administrative action by the Board by means of revocation of the category 3 nontraditional livestock license of Tim Snyder and assessment of civil penalties against Snyder. The Complaint alleges as grounds for administrative action violations by Snyder of N.D.C.C. § 36-01-08, and specifically violations of N.D. Admin. Code §§ 48-12-01-05(3), 48-12-01-05(4), 48-12-01-06(1), 48-12-01-06(2), 48-12-01-06(7), 48-12-01-07, 48-12-01-11(11), 48-12-01-19, 48-12-01-20(1), and 48-12-01-20(2). Article 48-12 is the article in the rules of the Board specifically regulating Nontraditional Livestock as authorized by N.D.C.C. ch. 36-01.

On November 7, 2002, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On November 14, 2002, the undersigned ALJ was designated. On November 15, 2002, the designated ALJ issued a Notice of Hearing scheduling a December 10, 2002, hearing.

On December 1, 2002, Snyder filed a Motion for Continuance, asking that the scheduled hearing date be continued, *i.e.*, postponed until a later date. On December 3, 2002, the Board

filed its Resistance to Defendant's Motion for Continuance. On December 3, 2002, the ALJ issued an Order on Motion denying Snyder a continuance. Mr. Schoppert then called the ALJ and asked for further oral argument on Snyder's motion. A prehearing conference was held on December 4, 2002, via telephone conference. As a result of that conference, the ALJ did not change his order and the hearing was held as scheduled on December 10.

The hearing was held in the Office of Administrative Hearings, Bismarck, North Dakota. Assistant Attorney General McCabe represented the Board. The Respondent, Tim Snyder, was present at the hearing. Mr. Thomas K. Schoppert, Minot, represented him. Four witnesses testified at the hearing, including two Game and Fish Department Game Wardens, Officers Skuza and Meier, the Deputy State Veterinarian, Dr. Susan Keller, and Snyder. Eighteen exhibits were offered and admitted. The Board offered exhibits 1-17; Mr. Snyder offered exhibit 2. *See* attached exhibit list.

At the close of the December 10 hearing, the ALJ heard oral argument from counsel.

Based on the evidence presented at the hearing and the oral argument of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Tim Snyder is a category 3 (deer) nontraditional livestock ("NTL") license holder in the State of North Dakota. He has a licensed NTL facility near Makoti, ND. Snyder has been a NTL license holder since 1998.

2. The original facility drawing Snyder submitted with his initial application for license is exhibit 17. However, exhibit 17A now more closely resembles Snyder's facility because of a fire which burned down his barn. The former shop now contains his quarantine area.

3. Snyder is a hobby NTL farmer having a small deer operation compared to the size of some other such operations in North Dakota.

4. On August 5, 2002, Snyder self-reported to the Board the escape of deer from his NTL facility.

5. On August 20, 2002, Game Warden Kenneth Skuza ("Officer Skuza") was notified of the escape and asked by the Board to conduct an inspection of Snyder's NTL facility. The Game and Fish Department has a memorandum of understanding with the Board for certain Board regulatory activities, including conducting investigations and inspections.

6. On September 7, 2002, Officer Skuza and Game Warden Gerald Meier ("Officer Meier") investigated at Snyder's facility. They had Snyder's oral permission to investigate at his facility and Snyder actually went with them during the course of their investigation. On September 15, 2002, Officers Skuza and Meier again investigated at Snyder's facility. During this second investigation, Officer Skuza took a roll of 24 pictures of various scenes at the facility. *See* photographs, exhibits 2-10.

7. On September 13, 2002, as a result of the first investigation at the Snyder facility, the Board issued an official quarantine to Snyder covering all of the deer on Snyder's facility. Exhibit 14. The quarantine was issued "due to possible inventory discrepancies, adult deer without official identification, escaped nontraditional livestock, failure to recapture escaped animals within ten days of escape, failure to report escapes within one working day, late submission of an annual inventory report, inaccurate description of facility on license application or failure to update and re-inspect facility, and failure to have an adequate quarantine facility." September 13, 2002, cover letter, *Id.* The quarantine requires all of Snyder's deer to "remain in your facility until the quarantine is released in writing." *Id.*

8. The Board has never declared that this matter with Snyder for which it declared a quarantine of his NTL operations is an emergency situation involving imminent peril to the public health, safety, or welfare of the citizens of North Dakota. *See* N.D.C.C. § 28-32-32. Neither has the Board alleged, except indirectly, at the hearing, that this matter with Snyder is a situation involving contagious and infectious disease among any of the domestic animals or nontraditional livestock of the state for which action to control, suppress, or eradicate contagious and infectious disease is necessary. *See* N.D.C.C. §§ 36-01-12 and 36-01-12.2

9. Investigations by Officers Skuza and Meier revealed the following:

a. On August 3, 2002, five deer escaped from Snyder's NTL facility (holding pen) because someone cut a hole in the fence of his pen where his deer are held. Although the evidence shows that Snyder has tried hard to recapture the deer, none of the five escaped deer have been recaptured or destroyed to this day (the day of the hearing). Snyder did not ask for an extension to recapture or destroy his escaped deer. *See* N.D. Admin. Code § 48-12-01-05(3).

b. Only one of the remaining eight deer in the holding pen (6 adult and 2 fawns) was properly identified as prescribed by the Board. One adult deer was tagged with an orange tag, number 117, but that tag was not a tag identifying the deer as prescribed by the Board. Snyder testified that two of the escaped deer were identified with yellow tags but those tags, too, were not tags identifying the deer as prescribed by the Board. Snyder testified that none of the adult deer in his holding pen prior to the August 3 escape were properly identified with tags issued by the Board or an accredited veterinarian. *See* N.D. Admin. Code § 48-12-01-06(1).

10. Investigation by Skuza and Meier also indicated other possible violations of the law as evidenced in the remaining allegations of the Complaint, but those allegations were not proven by evidence at the hearing. On the contrary, the evidence at the hearing showed the following:

a. Snyder notified the Board within one working day of the discovery of the escape of his deer. The deer apparently escaped late in the day or evening of August 3, a Friday. Snyder discovered the escape very early in the morning on Saturday, August 4. Early in the day on August 6, a Monday, Snyder notified the Board about the escaped deer. He called the Board and talked to Dr. Keller about the escape. This was the first opportunity Snyder had on a working day to report the escape. *See* N.D. Admin. Code § 48-12-01-05(2).

b. Snyder kept records of his animals marked as to number and sex and annually reported on them using the Non-Traditional Livestock Annual Inventory Report form. *See* exhibits 2, 11, and 12. *See also*, N.D. Admin. Code 48-12-01-06(2).

c. One of Snyder's fawns also escaped because someone cut a hole in the fence of his holding pen. However, Snyder found the fawn on the same day of the investigation by Skuza and Meier, on September 7, 2002. That same day, Snyder reported the death of the fawn to Skuza and showed Skuza where he found the fawn. Skuza confirmed the death of the fawn by shooting. Snyder did not call the Board about the dead fawn because he believed that reporting the escape and death to Skuza who was investigating for the Board at the time was reporting to the Board. *See* N.D. Admin. Code § 48-12-01-05(4).

d. Snyder did not falsely report information to the Board on his license application or reports filed with the Board. Although Snyder indicated on the forms the official ID for each adult deer he has in his facility, he does have the ID, but he did not place the ID on the deer (tag the deer) as required elsewhere in law. Snyder testified that the person from whom he initially purchased deer told him that the deer did not have to be tagged. Snyder retained the tags, however, and he still has the tags for each deer reported on his annual inventory report. Snyder did not falsely report anything. He had no intent to falsify information. He merely acted in accordance with what he was told. Unfortunately for him the information he was told about

tagging his deer was inaccurate. Also, Snyder failed to file an updated facility drawing. Because of a fire on his premises the initial drawing has changed. Although Snyder should have filed an updated facility drawing after the fire, N.D. Admin. Code § 48-12-01-13 only requires the filing of a facilities drawing at the time of application. *See* N.D. Admin. Code §§ 48-12-01-07 and 48-12-01-13.

e. Snyder's facility meets the fencing standards required by law. *See* N.D. Admin. Code § 48-12-01-11(11). It met the requirements upon initial inspection, and when Officers Skuza and Meier returned to take picture of Snyder's facility on September 15, 2002. After the fence had been cut, Snyder repaired or mended the fence. There was no evidence that the fence at the time of inspections did not meet the standards required by law.

f. Snyder has a quarantine facility that met requirements upon inspection when he was initially licensed and the evidence at the hearing shows a similar quarantine facility that apparently meets requirements, now. However, the Board should again inspect the quarantine facility, because the evidence is not clear in this regard. *See* N.D. Admin. Code 48-12-01-19. Yet, the evidence, taken as a whole, does not show a violation.

g. Snyder has provided transaction documents (manifest or bill of sale) evidencing the transfer, buying, or selling of at least the five deer held by him that have escaped. There was no evidence offered regarding the other deer, although counsel indicated in an exchange with opposing counsel that there may have been a failure to file a manifest, bill of sale, or other receipt with regard to the other deer. There was also no evidence provided about whether Snyder had recorded in the record book of the affected nontraditional livestock license all transactions by him within five days of the transaction. *See* N.D.C.C. § 48-12-01-20(1), (2).

11. One of the remaining adult deer at Snyder's facility appeared upon visual inspection to be abnormal in appearance, *i.e.*, not healthy, however, the Board has done no

testing on this animal for any diseases or sickness. At the hearing, Snyder offered to turn this deer over to the Board for CWD testing.

12. The two fawns in Snyder's holding pen were less than twelve months old, as was the fawn discovered dead just outside his fence. Snyder testified that he had several fawns die from ear tagging.

13. Although Snyder's holding pen fence had been cut three times, he repaired the cut on each occasion upon discovering the cuts. Two cuts appeared to be manmade and one cut appeared to be made by a wild male deer. Snyder testified that he has problems with people cutting his fence.

14. Snyder was very cooperative with the Board and the Game and Fish officers investigating for the Board throughout, from the time he self-reported the escapes through the investigations, and he continues to be cooperative, complying with the quarantine of his deer. The Game and Fish officers reported having a good relationship with Snyder.

15. Snyder had one of his deer tested for Chronic Wasting Disease ("CWD") in 2000. *See* exhibit 15. That deer tested negative. Although Snyder has offered to have the deer that appeared sick or abnormal upon inspection in September 2002 tested for CWD, no other Snyder deer have been tested for CWD or other diseases since the August 3, 2002, escape.

16. There are at least three other NTL licensees in the area near Snyder's operation.

17. Dr. Keller testified at the hearing that the Board is very concerned about the health of Snyder's escaped deer, especially in relation to the health of all other domestic and wild deer in the State. Although Snyder is able to give some information about the animals that were in his facility prior to the escape, there is no way for the Board to verify where all of his animals came from and to verify which animals escaped. There is also no way to capture and verify captured animals because none were properly tagged. If the Board is going to track escaped

animals and try to determine whether escaped animals are diseased, it needs to be able to review an accurate inventory form and compare it with properly identified animals, and captures and deaths of properly identified animals need to be reported. The situation at Snyder's facility with regard to properly tagging animals made this impossible. Properly tagging animals helps the Board verify much information that it cannot otherwise verify. If animals are not properly tagged, the Board can only accept the word of the owner for identifying information, if the owner even has such information.

18. It is possible that one or more of Snyder's escaped animals has CWD, which is a very serious communicable disease. However, there have been no positive tests for CWD to date in North Dakota, though there have been some from surrounding states and provinces. It would be impossible to know for certain that escaped deer from Snyder's NTL facility do not have CWD even if all the remaining deer at his facility were tested for CWD.

19. The evidence appears to show that all of Snyder's deer were purchased in state or born on his NTL facility, though his record keeping in this regard is may not complete. *See* FOF #10 (g), above.

20. Although the evidence shows that several of Snyder's Non-Traditional Livestock Annual Inventory Report forms were not timely filed, that is not an allegation of the Complaint. In any event, no administrative action was taken against Snyder for filing of tardy forms at the time he filed them (*e.g.* in 2000 or 2001).

### **CONCLUSIONS OF LAW**

1. Snyder is currently licensed as a category 3 (deer) NTL license holder in the State of North Dakota subject to regulation by the Board pursuant to N.D.C.C. ch. 36-01 and N.D. Admin. Code ch. 48-12-01. Snyder was so licensed during an investigation of the escape of deer from his NTL facility in September 2002.



2. The evidence shows, by the greater weight of the evidence, that Snyder violated the provisions of N.D. Admin. Code § 48-12-01-05 by failing to recapture or destroy escaped deer from his facility within ten days of the escape. N.D. Admin. Code § 48-12-01-05(3).

3. The evidence shows, by the greater weight of the evidence, that Snyder did not individually identify his deer as prescribed by the Board, either by tagging his deer with approved tags or by having his deer tagged with approved tags, in violation of N.D. Admin. Code § 48-12-01-06(1). One is presumed to know the law. *Bellefeuille v. Bellefeuille*, 636 N.W. 2d 195 (N.D. 2001).

4. The evidence does not show, by the greater weight of the evidence, that Snyder committed any other violations of N.D. Admin. Code ch. 48-12-01 as alleged in the Complaint. In regard to all of the other allegations, the evidence was inconclusive or nonexistent.

5. N.D.C.C. § 36-01-12 gives the Board authority to "take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious diseases among any of the domestic animals and nontraditional livestock of the state." Included as possible steps are the authority to quarantine livestock and the authority to kill any animals infected by or exposed to contagious and infectious diseases or any animals that may be infected or may be exposed to contagious and infectious diseases. The Board may also quarantine areas of the state. *See* N.D. Admin. Code § 48-12-01-03(9); *See also*, N.D.C.C. 36-01-08.

6. The Board "may revoke any license ... and may dispose of any nontraditional livestock imported possessed, confined, or transported for failing to comply with ... [its rules]." N.D. Admin. Code §48-12-01-07.

7. "If, after a hearing, the board finds that a person has brought, kept, or received any ... nontraditional livestock in this state and the animal or livestock is not in compliance with the provisions of this chapter or rules adopted under this chapter, a civil penalty not to exceed

five thousand dollars per violation may be assessed against that person." N.D.C.C. § 36-01-28(2).

### **ANALYSIS**

Snyder is a currently licensed NTL licensee who had deer escape from his licensed facility because others cut his fence. He reported the escape as required by law. He was very cooperative and has had a good relationship with regulating and investigating authorities. Although Snyder has committed some violations of the law, he did try to comply with some of the requirements he violated. Snyder did not recapture or destroy the escaped deer within 10 days or seek an extension for recapture or destruction, but he did try hard to recapture or destroy the escaped deer. He was unsuccessful. It cannot be easy to recapture escaped deer even if they are properly tagged, though, obviously, proper tagging can make recapture or destruction easier for the owner or others. Snyder also did not comply with the requirements of the law regarding proper identification of his deer, *i.e.*, tagging. As it turns out, that is a most serious violation, because proper identification is the cornerstone of regulation and disease control, not to mention recapture or destruction of escaped deer.

Nevertheless, it is unlikely that Snyder's deer have CWD, or other contagious or infectious disease, though because of improper identification and escape that cannot be verified. The Board cannot be certain that Snyder's escaped deer do not have CWD.

Already, Snyder's remaining deer have been quarantined and Snyder is complying with the quarantine. It would seem that not much more can be done to recapture the escaped deer. It would seem that although Snyder contributed to his situation by failing to comply with the law, something can be done to correct the problems he caused without putting him out of business. The violations do not seem to warrant putting him out of business.

Counsel for the Board in closing argument asked, as a result of the violations proved at the hearing, that Snyder's license be revoked and that all of Snyder's remaining deer be killed and tested for disease at his expense, but that no civil penalties be assessed of Snyder. Those actions would put Snyder out of business.

However, if Snyder had properly tagged his deer, they escaped, for whatever reason (much less that someone else cut the fence), and they still had not been recaptured to date, would the Board be seeking revocation of Snyder's license and destruction and testing of all of Snyder's deer? If none of Snyder's deer appeared to be sick or abnormal, and the scenario had played out as the evidence shows (*i.e.*, that the deer were not properly tagged, escaped and could not be recaptured), would the Board be seeking revocation of his license and destruction and testing of all his deer?

Again, the Board has neither in the complaint nor in its brief of Resistance to Defendant's Motion for Continuance, nor at the hearing, stated a belief that this situation is an emergency situation. The Deputy State Veterinarian did state at the hearing the possible disease ramifications of the situation with Snyder's escaped and remaining deer. Yet, those were stated as possibilities, some unlikely possibilities. The only thing approaching a certainty was the appearance of sickness or abnormality of one of the remaining deer. Again, Snyder offered to have that deer killed and tested.

The facts and circumstances, as well as the equities of the situation seem to require something less than what counsel for the Board recommends.

### **RECOMMENDED ORDER**

The greater weight of the evidence shows that Snyder violated the provisions of N.D. Admin. Code 48-12-01-05(3) and 48-12-01-06(1). The evidence at the hearing shows no other

violations. As a result of the violations proved and the possibility for disease control problems, which were to some extent of Snyder's own making, the ALJ recommends that Snyder be assessed a civil penalty under N.D.C.C. § 36-01-28(2), in an amount of not more than \$500.00. Further, the ALJ recommends that Snyder's one deer identified by inspection and investigation as sick or abnormal be killed and tested for disease, including CWD, at Snyder's expense, and that if the testing for that deer for CWD is negative (*i.e.*, CWD not detected), absent detection of some other contagious or infectious disease that requires further administrative action by the Board, the quarantine of Snyder's NTL operations at his Makoti facility will be lifted and he will be allowed to continue normal NTL operations at his facility. Further, the ALJ recommends that Snyder's current NTL license be suspended for a period of one (1) year, but that none of the suspension be invoked at the present time, provided that Snyder commit no further violations of the NTL laws within a period of one (1) year from the date of issuance of the Board's final order in this matter. If Snyder is found to be in further violation of the NTL laws of the State of North Dakota within a period of one (1) year from the date of issuance of the Board's final order in this matter, the Board may suspend Snyder's NTL license for one (1) year in addition to any further administrative action it may take against his NTL license as a result of the further violation.

Dated at Bismarck, North Dakota, this 27th day of December, 2002.

State of North Dakota  
Board of Animal Health

By: \_\_\_\_\_  
Allen C. Hoberg  
Administrative Law Judge  
Office of Administrative Hearings  
1707 North 9th Street  
Bismarck, North Dakota 58501-1882  
Telephone: (701) 328-3260